

- o Subscribe to basic service,
- o Take an unlimited intraLATA long distance calling plan,
- o Take a full package of vertical services including call waiting, call forwarding, speed calling, etc., and
- o Almost never use the phone or any of the services for which they are paying.

Once a customer uses the phone to make and receive more than one call per day, PCS is more expensive. Why people who barely ever use the network would need all the enhanced services is hard to imagine. Indeed, a service like call waiting would be useless, since there is almost no chance that the line would be busy when a second call is received. Such irrational behavior cannot be assumed to prevail in the marketplace and BellSouth's claim to entry based on this assumption should be rejected.

The consulting report submitted with the BellSouth application concluded that

At "high" levels of usage of local and intraLATA toll service (e.g., 150 or more combined outgoing minutes or 300 or more combined O&I [outgoing and incoming] minutes), BST's wireline Are PLUS plus Complete service plan is less expensive than any of the PCS options and will be preferred.<sup>31</sup>

To label 300 minutes of local incoming and outgoing usage as "high" is absurd. At four minutes per call, this equals 75 call per month, or one incoming and one outgoing call per day. Average usage is close to ten times as high when incoming and outgoing usage are combined.<sup>32</sup>

The report includes a graph which tries to show the frontier of usage along which PCS

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<sup>31</sup>MARC, Louisiana PCS Study, November 4, 1997, p. 5.

<sup>32</sup>The FCC (Competition in the Commercial Mobile Radio Services), p. 54, mentions 1000 minutes of local use per month. This is outgoing calls, and suggests 2000 minutes of outgoing and incoming calls. To this must be add intraLATA usage.

becomes attractive. The chart which results from this analysis is labeled not to scale, so it gives no hint of how absurd it is to argue that PCS is a competitor of local land line service (see Figure 1). When the chart is drawn to scale, it turns out that PCS is likely to be attractive to less than one half of one percent of customers. Even that is highly unlikely, since the cost of the telephone set is not included and the switch to measured service for outgoing calls is resisted by consumers, not to mention measured service for incoming calls.<sup>33</sup>

For the average consumer, PCS is out of the question as a substitute for local exchange service. The average monthly bill would on the order of \$500 for local and intraLATA calling. This compares to an average monthly bill at present of \$25-30 for basic service, intraLATA toll and vertical service.

The claim that PCS is a substitute for wireline and should be considered a competitor for purpose of section 271 petitions is based on deception by distortion. It should be clearly and decisively rejected by the FCC. The Department of Justice reached a similar conclusion.

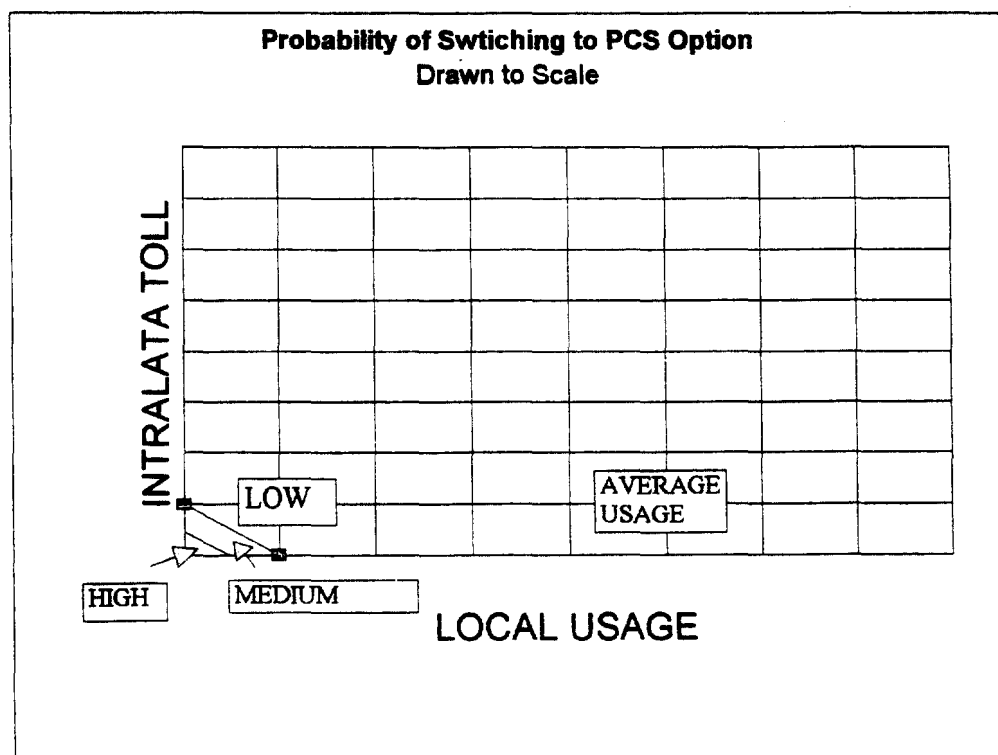
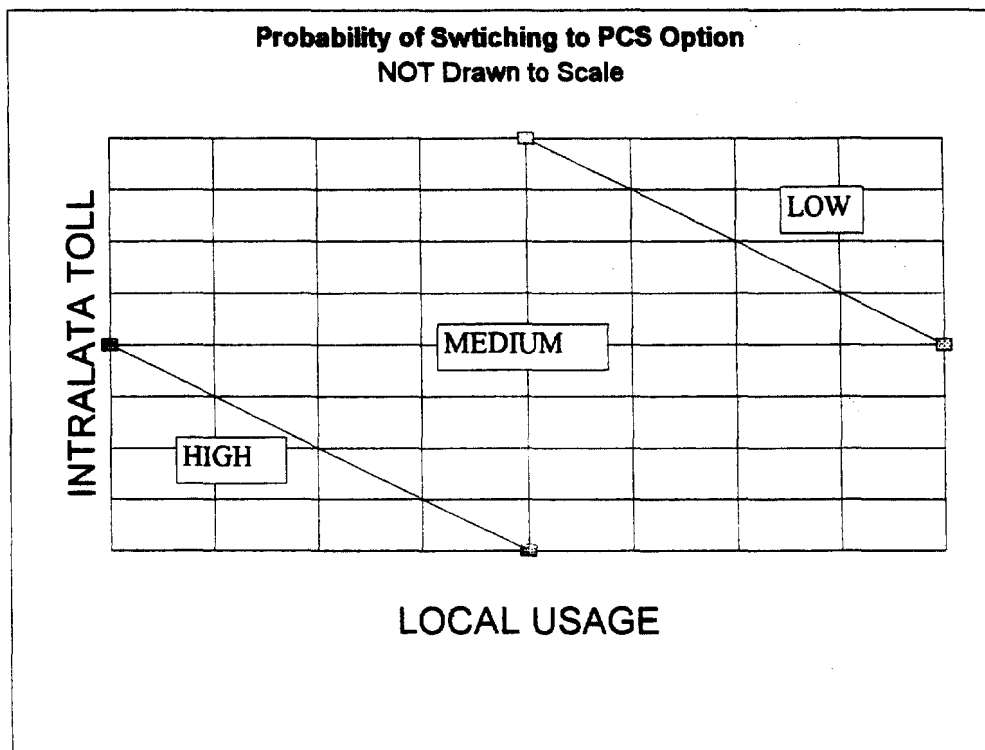
The Commission has determined that the Track A "competing" requirement can be satisfied by providers that offer an "actual commercial alternative" to the BOC telephone exchange service, but has not yet addressed whether the statutory requirements of Track A require an assessment of the technical and economic substitutability between competitors and the BOC services, and, if so, the degree of substitutability that is needed to establish that a provider is "competing." BellSouth argues that any commercially available provider of telephone exchange services can satisfy a Track A facility-based competitor requirement, even if its services are only substitutable for BellSouth's to a relatively marginal degree.

From an economic perspective, the substitutability of products (or services) can be assessed on a wide array of evidence, including analyses of the technical characteristics of products and their uses; the manner which products are marketed; the relative prices of products; and analyses of the frequency and

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<sup>33</sup>It can frequently be shown that significant residential market segments could lower their average bill if they switch to measured service. However, where optional measured service is available, they still do not.

FIGURE I



circumstances under which customer shift from one product to another. As the evidence in the record makes clear, PCS isn't substantially more expensive than wire line service for the great majority of consumers. In addition, PCS services are priced differently; PCS subscribers pay usage charges for outgoing calls (whereas wire line local services are often flat rated), and for incoming calls (which are usually free with wire line service). In lieu of these basic economic considerations, we concur with the Commission's decision to refrain from treating PCS as a substitute -- at least in the antitrust sense -- for wire line service.<sup>34</sup>

Once PCS is eliminated as a facilities based competitor, any claim to a Track A application collapses.

## **2. MOVING FROM TRACK A TO TRACK B**

Because Congress understood that entry would be difficult and there would be a variety of incentives and interests at work as the local monopoly was dismantled, Congress gave the RBOCs an alternative approach, known as Track B. If no request for interconnection were made by a facilities-based competitor, or it could be shown that the competitor did not negotiate in good faith or failed to meet agreed upon timetables, the RBOC could be allowed to enter the in-region InterLATA despite the lack of a facilities-based competition. To qualify for Track B, RBOCs have to show that Track A does not apply and it offers to provide interconnection and access subject to an approved Statement of Generally Available Terms (SGAT) (see Attachment 2 Chapter 2, section B). BST has again tried to claim that even though requests for interconnection have been made and competitors are trying to obtain unbundled network elements and get into the market, it should be allowed to switch to Track B.<sup>35</sup>

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<sup>34</sup>DOJ Louisiana, pp. 6..8.

<sup>35</sup>BST Application, p. 21.

The ALJ made it clear that BST in Louisiana had received such a request. BST has not tried to make a showing that the requesting party (ACSI) has failed to act properly under section 271 (c)(1)(A). Lacking a facilities-based competitor in Louisiana and failing to make a showing the potential competitors have not lived up to their part of the bargain, BST has tried to redefine the standard by which the competitive situation should be measured (see Attachment 2 Chapter 2, section C).

Since the facts are the same, the conclusion reached by the Florida staff is relevant --

- o BST does not meet the Track A requirement,
- o can not use the Track B requirement,
- o would not meet the Track B requirement, even if it could proceed under that option, and
- o has incorrectly tried to combined Track A and Track B to get around its fundamental failure to meet either.

The Louisiana application adds the twist that BST has not proven that PCS is a competing provider at the state or federal levels.

Table 3 summarizes the status of the section 271(c)(1) test in Louisiana.

**TABLE 3**  
**BELL SOUTH- LOUISIANA**  
**SECTION 271 [C] (1) COMPLIANCE EVALUATION**  
**FACILITIES BASED COMPETITION**

<b>ENTRY CONDITION</b>	<b>STATUS</b>
<b>TRACK A CONDUCT</b>	
1) REQUEST	YES
2) GOOD FAITH NEGOTIATION	YES
3) ON-TIME IMPLEMENTATION	YES
4) TRACK B AVAILABLE	NO
<b>TRACK A CONDITIONS</b>	
1) PROVIDING ACCESS	NO
2) APPROVED AGREEMENT	YES
3) PREDOMINANTLY OWN FACILITIES FOR BUSINESS	YES
4) PREDOMINANTLY OWN FACILITIES FOR RESIDENTIAL	NO
5) SERVICE TO BUSINESS	YES
6) SERVICE TO RESIDENTIAL	NO
<b>TRACK B</b>	
1) GENERALLY OFFERS TO PROVIDE ACCESS AND INTERCONNECTION	NO
1) SGAT APPROVED OR PERMITTED TO TAKE EFFECT	NO
<b>COMPETITION ANALYSIS</b>	
1) IRREVERSIBLE	NO

### **C. MISREPRESENTATION OF THE LONG DISTANCE BENEFITS OF LEC ENTRY**

BellSouth's claims about the competitiveness of PCS rest on a fundamental assumption of irrational behavior on the part of consumers. The empirical analysis deceives by distortion of scale. BST's claim about long distance competition exhibit similar characteristics. BST's claim that entry will produce substantial consumer savings are similarly misleading.<sup>36</sup> BST consciously uses different and conflicting price assumptions to mislead policy makers.

#### **1. BELLSOUTH'S CONFLICTING STATEMENTS ABOUT RATES**

BST has filed testimony that contradicts its own claims (see Table 4). BST has promised

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<sup>36</sup>Schwartz, Marius, "The 'Open Local Market Standard' for Authorizing BOC InterLATA Entry: Reply to BOC criticisms, Supplemental Affidavit on Behalf of the U.S. Department of Justice," November 3, 1997.

In fact, for the *off-peak* callers that make up the bulk of the residential market, SNET and GTE do *not* offer the best interLATA rates available in their respective territories, *for any customer calling volume.*<sup>a/</sup> For *on-peak* calling, competing carriers also have lower rates than GTE *for most service levels*, while the comparison of their rates with those of SNET's is mixed.<sup>b/</sup>

<sup>a/</sup> As mentioned, GTE's best off-peak rate plan is a straight 14 cents/minute, anytime rate. For off-peak callers, AT&T, Sprint, and LCI all offer rates that beat GTE's by 30-35%. Sprints and LCI's respective off-peak rates of 10 cents and 9 cents/minute dominate SNET's offers. (Sprint rebates a further 10% off the bill for customers spending at least \$25/month who maintain service for a year.) AT&T's 10 cents per minute off-peak rate matches SNET's.

<sup>b/</sup> MCI beats SNET's best on-peak offer for customers with lower calling volumes. Sprint's, AT&T's, and LCI's respective off-peak rates of 10 cents, 10 cents, and 9 cents/minute dominate SNET's offers. (Sprint rebates a further 10% of the bill for customers that maintain service for a year.) For customers using under \$25 per month, MCI's 12 cents/minute anytime beats SNET's 15 cents/minute anytime rate. At calling volumes over \$50 per month, SNET's rates are the best of the major players', *standard* offers for callers with heavy on-peak use, with the advantages around 10% at \$50 per month; less at greater volumes. However, SNET's penetration at high calling volumes is disproportionately small, perhaps because of the competitive importance of IXC's promotional calling plans offering very substantial additional savings at these calling volumes.

**TABLE 4**  
**CONFLICT REFERENCES TO LONG DISTANCE PRICES IN**  
**BELLSOUTH TESTIMONY**

**BELLSOUTH WITNESSES**

AT&T UNDISCOUNTED*	18.9
BST TARIFF**	17.0
AT&T DISCOUNTED*	15.0

**DOJ WITNESS**

OTHER DISCOUNT ***	12.0-14.0
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\*Schmalensee, \*\* Gilbert, \*\*\*Schwartz

reductions of 5 percent,<sup>37</sup> which are cited by some of its witnesses, but the witnesses that estimate consumer savings use figures that are three to four times as large.<sup>38</sup> BellSouth has claimed consumer savings, which are impossible to achieve, because it has not offered tariffs that will support its claims. Moreover, these reductions are much smaller than price discounts recognized by other BellSouth witnesses as *already available in the marketplace*.<sup>39</sup>

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<sup>37</sup>Gilbert, p. 18, cites tariffs and other witnesses as follows:

BellSouth has filed a proposed tariff for long distance service containing rates which would undercut AT&T's basic rates by 5%.

<sup>38</sup>Hausman, p. 11, uses price differences of 18 percent attributed to SNET.

Using the estimated number of AT&T customers on a discount plan, I find that overall SNET residential prices were about 18.4% less than AT&T's prices on average.

<sup>39</sup>Schmalensee, pp. 8... 9, shows that the average discount available in BellSouth states in 1996 was over 15 percent and admits that the available discounts are larger today.



Every ratepayer who signed up for BellSouth's tariffed discount would be paying at least 10 percent more, and on average about 40 percent more, than they would have to pay if they took a discount already available in the marketplace. BST may get long distance customers, but it will not be because it is offering a better price and it cannot claim any price benefit for consumers. Such irrational behavior cannot be assumed to prevail in the marketplace and BellSouth's claim to entry based on this assumption should be rejected.

The flaws in the BST claims about its own tariffs extend to its analysis of the competitive offerings of those local exchange companies (GTE and SNET) that have been allowed into in-region long distance. The DOJ has presented a vigorous and precise refutation of BST's benefits claims.<sup>40</sup> The DOJ has shown that BST and the RBOCs are far off the mark in their estimates (see Attachment 2 Chapter 1, section A.2).

- o Just as marketers use fraudulent and misleading comparisons in their advertising, BST's witness compare the lowest discounted price offered by LEC entrants into the long distance market to the competitors' highest undiscounted rates, forgetting that there is a great deal of discounting already in the market.
- o BST's discounts are actually no larger than many observed in the marketplace.

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For all BellSouth states combined, the average discount off basic rates on a dollar of residence AT&T toll calls in 1996 was only 15.6 percent...

The interexchange carriers have introduced calling plans with flat per-minute rates; an example is AT&T's One Rate plan, which charges 15 cents per minute regardless of distance or time of day... The average rate was about 18.9 cents per minute. Since 15 cents under the One Rate Plan is lower than 18.9 cents, the One Rate Plan might be attractive to many residence customers today who are paying basic rates...

The One Rate plan would not benefit all residence customers, however... The new plan would not benefit many customers who are already on another plan. For instance, a True Reach customer who already receives a 25 percent discount would typically pay more under the One Rate plan.

<sup>40</sup>Schwartz, pp. 32..34.

- o BST uses different prices for different purposes. BST's hired external witness assumed discounts that are three times larger than BST officials were willing to commit to.
- o BST also assumes that all customers use the same amount of long distance service. In fact, the few customers who could save by switching from an undiscounted rate to a discounted rate consume much less, so their savings have been overestimated.
- o BST also ignores the fact that substantial parts of the country and Louisiana are served by local exchange companies that are already allowed to sell long distance.<sup>41</sup>

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of BST entry into the long distance market.

Figure 2 shows the areas where the LEC offering would be attractive on the basis of price. As with the PCS example, we observe that the target market is a small, atypical set of consumers. Therefore, BST's claim to large direct price benefits from early entry are incorrect. The public interest benefits claims by BST for early entry are non-existent.

### **C. THE CAUSES OF THE FAILURE OF LOCAL COMPETITION**

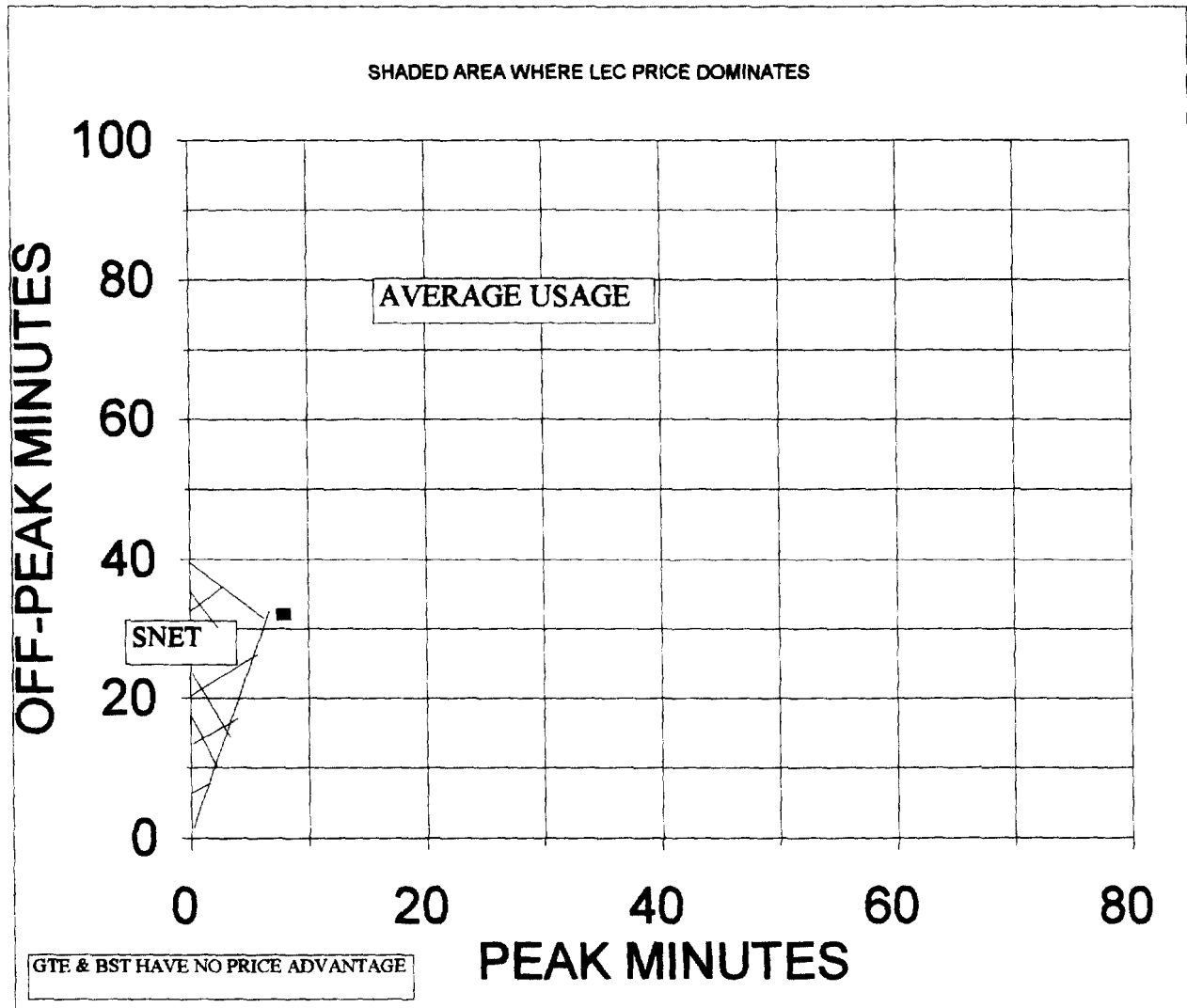
Given the clear and convincing evidence of a lack of competition in local markets in Louisiana, the causes of the failure of local competition under the 1996 Act have moved to the center of both the public policy and public relations battlefield<sup>42</sup> BST claims that local

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<sup>41</sup>DOJ Louisiana, Appendix A, demonstrates that the response by BellSouth fails to refute any of the central conclusions from South Carolina.

<sup>42</sup>In early November 1997, the United States Telephone Association (USTA) began running ads in Washington D.C., targeting the FCC decision on whether to allow RBOC entry into interLATA long distance. Previously, BellSouth had apparently orchestrated a letter writing campaign to the FCC (see Bureau of National Affairs: Regulation, Law & Economics, October 6, 1997 and National News, October 15, 1997, for press accounts.

**FIGURE II**  
**EXISTING LONG DISTANCE DISCOUNTS BEAT THE PRICES**  
**OF LOCAL COMPANIES ENTERING THE LONG DISTANCE MARKET**



Sources: Affidavits of Richard Schmalensee, John Hausmann, and Robert Gilbert, in the BellSouth petitions for section 271 permission to enter in-region long distance service in Louisiana and South Carolina (Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997 and In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 97-231, November 24, 1997). Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997, "Marius Schwartz, "The "Open Local Market Standard" For Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," which is Exhibit 2 of the DOJ evaluation

competition has not been created because the long distance companies are gaming the regulatory process and not trying hard enough to get into the local market. BST alleges that the long distance companies do not want the RBOCs to get into long distance. BST has offered a behavioral theory to explain the lack of local competition which claims that hundreds of companies -- *the RBOCs included* -- have conspired to refuse to enter the local residential market in order to prevent the RBOCs from entering the long distance market. BST has not tried to prove this charge before any state commission, a right it has under the Act.

Simple logic refutes this claim and the evidentiary record in this proceeding demonstrates that BST has made it extremely difficult to enter the local market. The alternative explanation for the failure of local competition to develop is that BST has simply not complied with the law and persisted in creating and defending barriers to entry into the local market that make it impossible for new entrants to compete.

There is a fundamental problem in the process by which the opening of the local network to competition has been progressing and the core of the problem is the unwillingness of the RBOCs to make the process work. RBOC cooperation is crucial, but BST has singled out potential competitors and made it extremely difficult for them to enter the market (see Attachment 2 Chapter 1, section B.1). The Florida staff concluded that

BST has yet to develop the ability, and by the testimony of its witnesses, the mind-set, to provide all facets of interconnection as required in the Act in a timely and efficient manner.<sup>43</sup>

Both the Consumer Advocate in South Carolina and the DOJ found evidence of similar intransigence on the part of BST. Examples of this problem abound in the evidentiary record in

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<sup>43</sup>Florida Staff, p. 83.

Florida.

- o BST has entered into a series of arbitration agreements with potential entrants. It has repeatedly failed to live up to the terms of those agreements (see Attachment 2 Chapter 1, section B.2).
- o BST has been ordered by the Commission to make certain services available to and take certain actions to facilitate local competition. It has failed to do so and its proposed Statement of Generally Available Terms (SGAT) fails to comply with those orders. The staff identifies at least six instances in which BST has simply ignored its obligations.
- o BST has repeatedly refused to implement standards that it is challenging legally, while it unilaterally takes actions that others are challenging. It refuses to subject the disputes that arise to the resolution process to which it agreed.
- o There are a range of specific problems that competitors face in entering the local market, some of which are inherent in the task of displacing a century old monopoly, but many of which have been created by the actions and policies of the incumbents (see Attachment 2 Chapter 1, section A.5).

Further, some of the most vocal critics of Bell South are competitors who are not long distance companies. They have nothing to lose by getting into the local business and everything to gain, but they have run into the maze of anti-competitive, discriminatory roadblocks that BST has put in the way of competition.

It is also worth noting that the most likely competitors for RBOCs, other RBOCs, have been remarkably absent from one potentially competitive marketplace that they know very well, local service. As the Consumer Advocate in South Carolina asked, if it is so easy to get into local, why hasn't BellSouth entered Bell Atlantic's service territory or Bell Atlantic entered into BellSouth's? Why hasn't S.C., with resources, expertise, and facilities just a few hundred miles away attacked the New Orleans market. Why has it taken Ameritech two years to discover that

St. Louis is an attractive market, but they propose to enter not as a facilities based carrier but as a reseller.

For all the complaining about long distance companies strategically refusing to compete, not one RBOC has come forward to make a showing that potential competitors are failing to negotiate in good faith or failing to meet their schedules. All the RBOCs need do is prove the claims they have been making in the press before the state public utility commission and they will overcome the first hurdle to entry. None has done so.

**D. LOCAL COMPETITION IS THE KEY TO PROTECTING THE PUBLIC INTEREST UNDER THE TELECOMMUNICATIONS ACT OF 1996**

Perhaps because the evidence demonstrates so clearly that BST has not met the terms of the Act and has no grounds to escape its requirements, BST has devoted a great deal of effort to seeking to convince the Commission to abandon its approach to section 271 by arguing that the public interest would be better served by early entry of RBOCs into long distance even if barriers to entry in the local market have not been fully removed.<sup>44</sup> The Commission should reject this argument not only because, as discussed above, the BOCs bring little benefit with entry into long distance, but more importantly because it is crucial to ensure effective local competition.

Consumers, especially residential consumers, need competition in both local and long distance, but they need it a lot more in local for several reasons. The RBOC arguments are wrong not because the long distance market would not be improved by an increase in competition, but because local markets are in much greater need of a dose of competition. Allowing local entry into long distance too soon could severely set back competition throughout the industry in both

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<sup>44</sup>Hausman

local and long distance (see Attachment 2 Chapter 1 section A.1).

Local competition has barely begun and it has yet to be placed on a firm basis. Because local service is a hundred year old monopoly, the practices, policies and actions of the local companies make it extremely difficult for new entrants to get into the market and compete against the entrenched incumbents. Regulators have had fifteen years to build protections against anti-competitive actions in the long distance market, they have had less than two years to do so in local and they are no where near an open local market anywhere in the country. Incumbents retain market shares in excess of 99 percent in virtually all markets (see Chapter 3 and Attachment 1, Chapter 1).

The local market is twice as large, has never been subject to competition and has had its profits largely deregulated (see Attachment 2 Chapter 1, section A.3). CFA estimates that for every one dollar of savings consumers might realize from increased competition in long distance, there are four or five dollars that might be gained as a result of introducing competition into the local market). Therefore the inefficiencies and excess profits that are embedded in local rates are much larger, we estimate between five and ten times as large, and only competition will get them out.

The problem of premature entry of RBOCs into in-region long distance should be seen to include more than the quantified value of price cuts. Premature entry has a number of anti-competitive implications that would deal a severe blow to local competition (see Attachment 2 Chapter 1, section A.4).

- o RBOCs would lose their incentive to cooperate in opening their markets to competition.

- o Premature entry allows the RBOCs to be the only entity that can offer an attractive integrated bundle of services.
- o Premature entry drives competitors to use resale as the primary approach to competition, since that is the easiest alternative, but it is the form of competition that provides the least threat to incumbents.
- o Premature entry forces regulators to rely on policing post-entry behavior which is much more difficult to implement to promote and protect competition than imposing pre-entry conditions on the RBOCs.

Competition based on resale of local service, which is the inevitable result of premature entry into long distance, simply will not support price competition in local. As a result of premature entry, consumers will lose effective competition in both local and long distance. Because local service is the core of any bundle of telecommunications services -- the first stop in one stop shopping -- if local companies get into long distance before there is effective competition for local, they will grab market share in long distance without having to compete on price in local service. They will simply offer bundles and trade on their incumbency. That is the actual experience where local companies have been allowed to enter in-region long distance. That is exactly what has happened in those cases where the local companies have been allowed to get into long distance in their home territories. The loss to consumers from a failure to ensure a sound basis for local competition far outweighs any benefits from increased competition in long distance.



### **III. THE COMPETITIVE CHECK LIST**

Recognizing that competitors would have to interconnect with the incumbent local exchange companies to offer local service and that competitors would find it difficult to supply many of the functionalities necessary for local service, the Congress imposed a series of obligations on the RBOCs (see Table 5). The competitive checklist is an impressive array of obligations that reflect the extremely complex and integrated nature of the modern telecommunications network.

Congress did more than identify specific items that had to be made available. It specified the terms and conditions on which they had to be offered. It used broad language to require just, reasonable and nondiscriminatory availability. There are two crucial aspect to this problem.

#### **A. JUST AND REASONABLE PRICES**

One major condition Congress placed on the RBOCs was the price at which they had to be offered. The importance of price is obvious. In its South Carolina comments DOJ offered the observation that if a competitor does not have certainty about price, investment and commitments cannot be made (see Attachment 2 Chapter 3, section A. 1).

Expectations concerning future prices can be as important, or even more important, than current prices. A market will not be "irreversibly" opened to competition if there is a substantial risk that the input prices on which competitors depend will be increased to inappropriate levels after a section 271 application has been granted. Such price increase obviously could impair competitive opportunities in the future. As important, a substantial *risk* of such a price increase can impair competition *now*. Competitors that wish to use unbundled elements in

**TABLE 5**  
**THE COMPETITIVE CHECKLIST**

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

- (I) interconnection in accordance with the requirements of section 251 (c)(2) and section 252 (d)(1).
- (ii) non-discriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1).
- (iii) non-discriminatory access to the polls, duct, conduits, and right-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.
- (iv) local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
- (v) local transport from the trunk side of a wire line local exchange carrier switch unbundled from switching or other services.
- (vi) local switching unbundled from transport, local loop transmission, or other services.
- (vii) non-discriminatory access to -
  - (I) 911 and E911
  - (II) directory assistance services to allow the carriers customers to obtain telephone numbers; and
  - (III) operate a call completion services.
- (viii) white pages directory listings for customers on the other carrier's telephone exchange service.
- (ix) until the date by which telecommunications numbering administration guidelines, plan, or rules are established, non-discriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.
- (x) non-discriminatory access to databases and associated signaling necessary for call routing and completion.
- (xi) until the date by which the commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through a remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.
- (xii) non-discriminatory access to such services or information as unnecessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251 (b)(3).
- (xiii) reciprocal compensation arrangements in accordance with the requirements of section 252 (d)(2).
- (xiv) telecommunications services available for resale in accordance with the requirements of section sections 251 (c)(4) and 252 (d)(3).

combination with their own facilities will incur significant costs when they invest in their own facilities. Such investment will not be forthcoming *now* if there is a substantial risk that increases in the prices for complementary assets, i.e. unbundled elements, will raise the competitors total cost to a degree that precludes effective competition.<sup>45</sup>

In Louisiana, permanent prices were not adopted until late October 1997, less than two weeks before BST filed for entry. The absence of permanent prices may go a long way toward explaining why there had not been any competition until that point.

Unfortunately, the prices that were set are not likely to establish a basis for competition. The LPSC ignored the recommendations of the ALJ on a number of key points that affect all aspect of the analysis. These include technology assumptions,<sup>46</sup> depreciation rates,<sup>47</sup> joint and

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<sup>45</sup>DOJ BST, p. 40.

<sup>46</sup> ALJ, Cost (p. 23):

Finally, with regard to network design assumptions utilized in the costing analysis, we are convinced by the reasoning of the Michigan Commission and the FCC that the most rational and procompetitive approach to the issue is to assume the existing location of BellSouth's switching and outside plant facilities, while further assuming the complete replacement of those existing facilities with the most efficient, least cost technology currently available, as of the time of the costs studies are conducted.

<sup>47</sup>ALJ Cost, p. 39,

Further, we find that BellSouth's proposed depreciation rates do not reflect forward looking costs, and are inadequate for the purposes of this proceeding, as the depreciation lives are based upon the company's embedded network and are admittedly designed to recover shareholders investments. We are not persuaded that the FCC favors recovery of embedded costs through depreciation rates, but, in any event, disagree with such a conclusion.

Neither are we satisfied with using the Louisiana specific FCC rates or the FCC ranges for depreciation purposes in this proceeding, as neither was develops based solely on TELRIC principles.

We direct that BellSouth conduct a current depreciation study which complies with TELRIC principles.

common costs.<sup>48</sup> Although the Department of Justice raised a number of specific concerns, it felt the general methodology was appropriate.<sup>49</sup> The ALJ pointedly noted the underlying problem, which the DOJ did not address, is not the methodology, but the assumptions and inputs used to estimate costs.

One principle which garners such consensus, however, is the "trash in = trash out" theory, meaningful in these proceedings as "bad input" (into any costing methodology = "bad output" and vice versa). What the parties here largely dispute is what the correct inputs to the Commission's costing analysis should be. Similarly, while the parties do not dispute the use of the Commission-required LRIC/TSLRIC costing analyses as a basis of the rates to be established, they are not in agreement concerning the makeup of LRIC/TSLRIC costs.<sup>50</sup>

The specific areas where prices were not believed to be appropriate by both the DOJ and the ALJ include the failure to deaverage loop costs,<sup>51</sup> the cost of collocation,<sup>52</sup> and the cost of

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<sup>48</sup> ALJ Cost, p. 43,

However, while we are interested in achieving shared and common cost inputs which most accurately reflect a forward looking marketplace, we conclude that there is insufficient evidence in the record to support the propriety of the specific adjustments recommended by Ms. Desmukes and insufficient evidence of a better alternative to the shared and common cost calculations proposed by BellSouth.

<sup>49</sup>DOJ Louisiana, pp. 22-23.

In Louisiana, BellSouth's pricing for unbundled elements is in most respects consistent with the Department's focus on pro-competitive pricing principles. Significantly, BellSouth's permanent prices for interconnection, unbundled elements and transport and termination, recently approved by the LPSC, were developed from a study by the LPSC staff consultant according to the TSLRIC/LRIC rate making requirements that the LPSC adopted after the Telecommunications Act was passed, as well as the TSLRIC principles of the Michigan PSC. The Department is satisfied that this methodology embodies the basic concepts of forward-looking cost-based pricing, and is consistent with the Department's competitive standard.

<sup>50</sup>ALJ Cost, p. 10.

<sup>51</sup>See DOJ Louisiana, p. 23. ALJ Cost, p. 26, puts it as follows:

vertical services.<sup>53</sup>

Table 6 shows that combining the general issues raised by the ALJ and the specific areas

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However, we are not persuaded by the use of CBGs as proposed by the intervenors is the best method for analyzing costs differences across the state. We question the necessity and practicality of setting rates based upon such small fragments of the state, and, instead, favor a method which utilizes a small number of more broadly classified density zones. Unfortunately, no party has presented such a proposal in these proceedings. Consequently, we reserve a final decision with regard to implementation of an appropriate method for geographic deaveraging, pending further proceedings in this matter and the opportunity for all parties to file proposals regarding appropriate "density" zones.

<sup>52</sup>DOJ Louisiana, p. 26

BellSouth offers no prices at all in Louisiana for one of the significant components of physical collocation -- space separation -- leaving the determination of such prices to negotiations on a case-by-case basis. For other components, such as space construction, BellSouth also intends to impose charges that have not been adequately demonstrated to be cost based...

The LPSC's ALJ concluded that BellSouth's rates for collocation should be subject to the same forward-looking cost standards applicable to pricing of interconnection and unbundled network elements generally, and proposes to use a collocation cost model offered by potential competitors...

Because its failure to commit itself to certain pricing principles raises significant competitive concerns -- i.e., raising the possibility of unreasonable prices and drawn out negotiations that have the effect of precluding competitive entry -- we cannot conclude that the pricing structure for collocation will permit efficient entry so as to fully and irreversibly open the local market.

See also, ALJ Cost, p. 55.

<sup>53</sup>DOJ Louisiana, p. 28,

Our concern with the pricing of vertical services does not go merely to whether a charge for vertical features should be imposed separately or bundled with the switch port charge, but also to the costs associated with purchasing them. The ALJ proposed not to adopt any permanent rate for vertical switching features, but to conduct further proceedings on the issue, in light of the limited opportunity the consultant had to analyze BellSouth's cost data, while using the consultant's recommended rate on an interim basis. The LPSC rejected this recommendation without explanation.

See also, ALJ Cost, p. 52.

**TABLE 6**  
**QUESTIONS RAISED ABOUT LOUISIANA SGAT PRICES**

**INTERCONNECTION**

TECHNOLOGY  
DEPRECIATION  
COMMON COSTS

**UNBUNDLING**

LOOP	DEAVERAGING* TECHNOLOGY DEPRECIATION COMMON COSTS
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SWITCHING	TECHNOLOGY DEPRECIATION VERTICAL SERVICES* COMMON COSTS
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**RECOMBINATION GENERAL**

**RESALE**

ORDERING	FALLOUT RATE
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COLLOCATION	CONSTRUCTION* OTHER COSTS**
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SOURCES: Chief Administrative Law Judge, Recommendation on 14-Point Checklist, Docket No. U-22252, August 14, 1997, Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997, and Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.

\*/ Both DOJ and the ALJ cite these factors

\*\*/ Only DOJ raises this point.

All other points are raised only the ALJ.

in which both the ALJ and the DOJ have concerns results in an extensive critique of the prices adopted by the LPSC. Each of the four specific areas of pricing covered in Section 252 of the Act is subject to question. The application to enter long distance should be rejected on these grounds alone.

## **B. NON-DISCRIMINATORY ACCESS**

The second condition set by Congress on BOC entry was non-discriminatory access to functionalities and network elements. Again, the Department of Justice stresses the critical problem that uncertainty of access to functionalities plays in retarding competition.

The Department's analysis of wholesale support processes flows, not simply from statutory requirements, but most fundamentally from our recognition that these processes are critical to facilitating competition. Inadequate processes will prevent competitors from providing the level of quality and timeliness that customers rightly expect from telecommunications providers, and faced with such shortcomings, customers will hold the competing carrier -- not the delinquent incumbent -- responsible for the failure. Because of this risk, competitive providers are unlikely to undertake entry on a significant scale when incumbents are offered only a paper commitment to provide the necessary support processes at some future point rather than adequate and reliable support processes.<sup>54</sup>

BST has performed poorly in making interconnection and access to parts of the network available on non-discriminatory terms (see Attachment 2 Chapter 3, Section A.2). DOJ offers the following observation with respect to one of the critical items on the checklist, combinations of unbundled elements.

Interconnect agreements and an SGAT that fail to state adequately the terms and conditions under which a BOC will provide unbundled elements so that they may be combined do not satisfy section 251 (c)(3). In light of the substantial competitive implications of this issue we believe that a BOC should be required to

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<sup>54</sup>DOJ Louisiana, p. 17.

(1) clearly articulate the manner in which it proposes to offer UNEs so that they may be combined, (2) demonstrate that its proposed method is reasonable and non-discriminatory, and (3) establish that it has a practical ability to process orders and provision unbundled elements that are to be combined by CLECs. In this application, BellSouth again fails to satisfy these requirements...

Given the recent litigation relating to the requirement to provide UNEs in a manner that enables competitors to combine them, the Louisiana Public Service Commission has yet to make any specific findings that BellSouth is providing unbundled network elements in a manner that allows requesting carriers to combine them to provide telecommunications services.

BellSouth states that it is open to negotiating at least some of the issues concerning the combining of UNE's. This is insufficient for a basic reason: outlining an undeveloped plan for enabling competitors to combine elements and offering to negotiate terms and conditions on a case-by-case basis do not commit BellSouth to any procedure -- let alone one that would be sufficient to satisfy section 251 (c)(3) and the checklist standard...

At present, Bell South has suggested that it may be willing to discuss other approaches, but has not made any binding commitments enabling a CLEC to combine UNEs in any other fashion.<sup>55</sup>

In South Carolina, DOJ added the observation that one of the most damaging problems is to start marketing then find that the incumbent cannot or will not deliver, forcing the competitor to alienate its potential new customers.

Since the vast majority of local subscribers are current customers of the incumbent, if switching of customers is impeded then entry -- through any of the three modes - - would be stopped dead in its tracks. In California, for example, MCI and AT&T's efforts to enter the market were frustrated when PacBell's systems for processing resale orders broke down, causing substantial delays before customer could be switched to competitive carrier and leading those companies to end their marketing campaigns.<sup>56</sup>

Competition simply cannot get started if competitors do not know what their costs will be

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<sup>55</sup>DOJ Louisiana, pp. 10..11..14.

<sup>56</sup>Schwartz, p. 20.



and have no assurances that when they win a customer they will be able to hook them up quickly and efficiently

The issue of non-discrimination has come to focus on the ability to support new entrant needs for interconnection, unbundled elements and resale at commercial scale. As the Department of Justice noted,

A mere paper promise to provide a checklist item, or an invitation to negotiate, would not be a sufficient basis for the commission to conclude the BOC "is providing" all checklist items. Nor would such paper promises constitute an appropriate basis for the department to conclude that the market had been fully opened to competition.<sup>57</sup>

The ALJ in Louisiana found that BST had not demonstrated its ability to deliver on its promises

BellSouth has not demonstrated to the Commission that its operational support systems, as provided for in its SGAT, can actually provide, at this time, non-discriminatory access to new entrants. There is no evidence in the record that BellSouth interfaces can perform as well as BellSouth claims they will and no evidence that access is non-discriminatory from the standpoint of the amount of time necessary to access the OSS and obtain the desired information or services. Further, BellSouth has not demonstrated that its OSS provides information on an equal, non-discriminatory basis, or that its interfaces are equally user friendly to both BellSouth and its competitors. Finally, BellSouth has not demonstrated its ability to increase the capacity of its systems sufficiently and in a time frame necessary to effectively serve competing providers. Accordingly, BellSouth's operational support systems cannot meet the non-discriminatory access requirements of checklist Item 2.

The Commission also has some concern regarding the capacity of BellSouth's various interfaces to handle the needs of new entrants... Again, however, BellSouth has not provided evidence of any testing results to demonstrate its ability to increase its capacity sufficiently and in a time frame to effectively serve competing providers.

The Commission further concludes that BellSouth's failure to offer non-

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<sup>57</sup>DOJ Louisiana, p. 9.